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Message from the President of the United States, transmitting an agreement between the Cherokee Commission and the Iowa Indians in the Indian Territory

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MESSAGE
FROM THE
PRESIDENT OF THE UNITED STATES,

TRANSMITTING

An agreement between the Cherokee Commission and the Iowa Indians in the Indian Territory.

JULY 3, 1890.—Read, referred to the Committee on Indian Affairs, and ordered to be printed.

To the Senate and House of Representatives :

I transmit herewith, as required by section 14 of the act of March 2, 1889, an agreement concluded on the 20th day of May last between the Commissioners on behalf of the United States, commonly known as the Cherokee Commission, and the Iowa Indians residing in the Indian Territory.

A letter of the Secretary of the Interior, which is accompanied by communications from the Commissioner of Indian Affairs and the Assistant Attorney-General, is also submitted.

These papers present a full and clear statement of the matters of fact and questions of law which Congress will need to consider in passing upon the question of the ratification of the agreement which is submitted for its consideration and such action as may be deemed proper.

BENJ. HARRISON.

EXECUTIVE MANSION,
July 2, 1890.

DEPARTMENT OF THE INTERIOR,
Washington, June 27, 1890.

THE PRESIDENT:

On the 2d day of June there was received at this Department the inclosed communication to you, signed by the members of the Cherokee Commission. It was accompanied by the articles of agreement inclosed, dated May 20, 1890. The fact of the arrival of these documents was made known to you without delay; but as there was a serious question relating to the validity of the contract, because the members of the Iowas of Kansas and Nebraska had not signed, the papers have been detained, pending such investigation as would enable me to form a satisfactory conclusion on the point presented.

It may be best first to present an abstract of the agreement itself, and the statistics relating thereto, and afterwards present for your

consideration the question whether the contract should be ratified without the signatures of the Iowas of Kansas and Nebraska.

The agreement itself provides for a cession by the Iowas of all the reservation in the Indian Territory set apart by Executive order August 15, 1883, saving to each Indian an allotment of 80 acres, to conform to usual survey, an Indian having improvements gaining a preference therefor; all to be made at cost of the United States and under the rules of the Secretary of the Interior by special agents, and within sixty days after the special agents shall appear on the reservation and give notice. If any one fails to make his or her selection the agent shall make the selection for the Indian. "And when all said allotments are made and approved then the residue of said reservation, except as hereinafter stated, shall, as far as said Iowa Indians are concerned, become public lands of the United States." (Art. III.)

Patents are to issue holding the allotments in trust for twenty-five years, not subject to tax, etc., and thereafter in fee to Indians, their heirs or devisees. Ten acres in square form, including church, graveyard, and school-house at Iowa Village, are reserved. When allotments are made the Commissioner of Indian Affairs is to expend \$24,000 for improvements (specifically enumerated), and the United States will pay per capita \$3,600 per annum, semiannually for first five years; \$3,000 per annum for second five years; \$2,400 per annum for third five years; \$1,800 per annum for fourth five years; \$1,200 per annum for fifth five years. These payments are regulated somewhat by the agreement.

In Article VIII it is provided that this "shall not affect any other claim of the Indians," nor "any interest that said tribe or its members may have in any reservation of land outside of the Indian Territory," nor annuities.

The chief, Tohee, being blind, is given \$350.

In supplemental articles signed by the Commissioners only it is provided the trust to allotted lands may be continued at the end of twenty-five years for another five years, and the chief may select an additional ten acres, in square form, for use of tribe in common. These supplemental articles are altogether in favor of the Indians, and are sufficiently signed by the Commissioners only. The agreement is in due form.

There are eighty-eight persons on the reservation. Twenty-three of the males are over eighteen years of age, of whom thirteen have signed. Of less than fifty, male and female, over eighteen years, thirty-four have signed. Of entire population of eighty-six men, women, and children, signatures have been obtained of those over eighteen years, who represent sixty-two.

The reservation has 228,418 acres; the allotments will contain 6,890 acres. The residue, 221,528 acres, becomes the land of the United States. The amount agreed to be paid in the aggregate is \$84,350, or 38 cents an acre. (See commissioners' report.) The commission remarks that it was aware of the very limited extent of the Iowas' real title and interest in and to said lands, but their claim is "absolute ownership," and these negotiations took place with these different views existing. The above was deemed the most satisfactory conclusion that could be reached. By reference to the act of March 2, 1889 (25 Stats., 1005) under which this commission acts, it will be seen that you are required to report the agreement to Congress at its next session, and to the council or councils of the nation or nations, tribe or tribes agreeing to the same for ratification.

In the present instance there is no council for the Iowas making this agreement, as will be seen by the report of the commissioners accompanying the agreement. It is there written:

The Iowas have no government that we are aware of. They have a chief and he has some advisers of his own selection, but no one seems to have authority to control or direct. In conference with the commission any Indian seemed to have as much to say and with as much authority as the chief.

The act of Congress necessarily deals in general directions for cases as numerous and varied as are therein embraced, and I think if it is to be ratified at all by the Indians it must be by the same Indians that have signed it.

THE PRINCIPAL QUESTION OF LAW.

Besides the Iowas who signed this agreement, there are others yet remaining on the reservation in Nebraska and Kansas. These number 166 and their reservation, subject to allotment and as hereinafter more particularly stated, contains 16,000 acres. Allowing for allotments 11,620 acres, which is 70 acres for each person (the usual estimate), there will remain for sale there 4,380 acres, deemed now to be worth \$25 an acre, equal to \$109,500.

This reservation was established by treaty September 17, 1836 (7 Stats., 511), embracing 200 sections of land. By treaty May 17, 1854 (10 Stats., 1069), the Iowas ceded to the United States all of this reservation except a portion then described, and which, as the treaty said, should be the future and permanent home of the Iowas. By treaty March 6, 1861 (12 Stats., 1171), they ceded to the United States, for use of the Sac and Fox tribes of the Missouri, a portion of the reservation as reduced by the treaty of 1854, and provided the remainder should be for the exclusive use of the Iowas.

By certain articles in the treaty (1854) it was provided that the lands ceded thereby were to be sold and the proceeds paid to the Iowas, and the reserved land was to be assigned to each person or family under direction of the President, who was also authorized by and with the consent of the Senate to "adopt such policy in the management of their affairs as, in his judgment, may be most beneficial to them; or Congress may hereafter make such provision by law as experience shall prove to be necessary."

In the early part of the year 1883 there was much discussion among the Iowas in Kansas and Nebraska about going to the Indian Territory. In 1878-'79 a portion of the tribe had wandered south, and on August 15, 1883, the President established the reservation in the Indian Territory for the permanent use and occupation of the Iowa and such other Indians as the Secretary of the Interior may see fit to locate thereon. (Report Commissioner Indian Affairs 1883, p. 223.) The number of the whole tribe was at this time about 220, and only 88 of those were or have been on the Indian Territory reservation.

By act of March 3, 1865 (23 Stat., 351), which was assented to by the Sac and Fox and the Iowas in open council of each tribe, the Secretary of the Interior was required to have surveyed and sold at public sale to those intending to be actual settlers the remainder of the reservations of these tribes in Kansas and Nebraska. The improvements were to be sold separately. The act fixed the minimum price of the land at \$8 an acre. This act provided, also, that any member of the Iowa tribe residing at its date on these lands and having improvements thereon might elect to remain, and such land should be withheld from sale and

the Secretary of the Interior should issue him or her a certificate therefor; and this was to be in full satisfaction of his interest in the reservation or the money realized therefrom. The Indians were to be paid for their improvements, and the proceeds of the United States improvements and of the land were to be deposited in the Treasury and the income expended for the benefit of the Indians. The most important provision of this act in connection with the present question is section 5, which reads as follows:

That the Secretary of the Interior may, with the consent of the Indians expressed in open council, as aforesaid, secure other reservation lands upon which to locate said Indians, cause their removal thereto, and expend such sum as may be necessary for their comfort and civilization.

The President was authorized to issue patents to the tribes for the reservation selected under the foregoing provision, and whenever allotments were desired on the reservation provided for they could be made. An appropriation of \$10,000 was made for the purpose, and the Secretary of the Interior authorized, upon consent in open council, to remove the Iowas residing in Kansas and Nebraska to the reservation secured. The remarkable fact is that nothing has been done under these careful provisions. No survey of the lands, no public sale, no allotments, and no removals have occurred. The Iowas in Kansas and Nebraska have staid there substantially; and those in the Indian Territory have gone on and finally agreed to sell their interest in that land, retaining allotments and all other claims. Under the present administration orders have issued for the completion of this survey with a view to the proper allotment and sale in Kansas and Nebraska.

By act of January 26, 1887 (24 Stats., 361), the third section of that of 1854 was amended so that each Iowa Indian taking land in the Kansas or Nebraska Reservation would be charged with it at its fair valuation, in part satisfaction of his interest in that reservation, or the proceeds thereof, but his right to share in other funds and credits of the tribe should not be impaired thereby.

On July 31, 1885, by the Commissioner of Indian Affairs, under approval of the Acting Secretary, the Iowa Indians were informed that if they so desired they could be located on the present Iowa Reservation in the Indian Territory, and that a patent therefor would be made to the Iowa tribe, less a sufficient quantity for the Tonkawas then located there. To this the Iowas assented, but they have done nothing more. On August 15, 1889, the Acting Secretary wrote the Commissioner that it was not necessary for the Iowas in Kansas to remain there until the allotments there were made to those desiring them, but some provision should be made for the removal of those wishing to go to the Indian Territory. The Commissioner, November 15, 1889, advised the Indian agent relative to the removal that no further action should be taken in the matter until the allotments have been made or until further instructions should be received.

It thus appears that the Iowas had alternatives presented to them upon the cession of their lands under act of 1885; they could take allotments on lands as occupied by each, or they could go to the reservation to be secured for them. If any one took his allotment claim, he was not to be also entitled to participation in the new reservation. This reservation was to be secured by the Secretary, consented to by the Indians; they were to be removed to it, and a patent was to be granted by the President to the Iowa tribe.

The reservation now under consideration was created by executive order before this act of 1885—that is, August, 1883. Not only for the

Iowas who had wandered there, but such other Indians as the Secretary might see fit to locate thereon. Neither it nor its occupants were mentioned in the act of 1885. No consideration was ever paid for it by the Indians, and those on it have in fact never acquired any title, because not accompanied by the tribe, to whom alone a patent could issue, and only upon occupancy by the tribe.

The lands in this Indian Territory were then in a wild unsettled country, while the act of 1885 put the minimum price on the lands in Kansas and Nebraska at \$8 an acre; they are now worth at least \$25 per acre, according to the best information. The lands in the Indian Territory have been agreed to be sold at about 38 cents an acre, allotments being also granted. This low price is accepted by the Iowas there evidently because of their knowledge of the weakness of even their own claim.

There is abundant land on the Kansas and Nebraska reservation for allotment to all there, as above shown; the survey, sale, and allotments will be ordered without further delay, and insisted upon until consummated; and it is not perceived but that this must result in a much greater advantage to these Indians than they could obtain in the Indian Territory. It is to be remembered they can not have both—their allotment in Kansas and Nebraska and also their claim in a reservation to which they have never removed.

The act of 1887 clearly exhibited that it was not then expected that the tribe would remove and secure a patent elsewhere, but that the plan of allotments on the reservation and sale of the remainder thereof was to be pursued. This was about two years after assent in council to remove.

Moreover, it is to be noticed that were these Indians in Nebraska and Kansas now to demand or receive allotments in the Indian Territory or the proceeds of lands sold there under the agreement with the Cherokee commissioners, they would thereby forfeit their claims to the very favorable terms of the laws of 1885 and 1887.

It is deemed to so construe this law on the whole subject as to require the assent of the Iowas in Nebraska and Kansas, and thus require or induce them to forfeit their present advantages, would not be protecting their best interests.

There having been no consent to accept the reservation since the last Congressional exercise of its control (the act of 1887), and no actual occupancy of the Indian Territory reservation by those of Kansas and Nebraska, it is deemed the Iowas in the Indian Territory were the only ones necessary to consult, and they only out of a disposition to induce them to go upon allotments and to cultivate them in a contented state of mind. If the Iowas of Nebraska and Kansas hereafter claim a reservation for such as will not accept allotments where they are, it can be given if deemed necessary or proper. They may be settled even east of the Western Cherokee line.

Congress has complete power and jurisdiction on consideration of this question to control the subject by legislation as it deems best for the tribe. (*United States vs. Kagama*, 118 U. S. S. C. B., 375; *Choc-taw Nation vs. United States*, 119 U. S., 27.)

The views of the Acting Commissioner of Indian Affairs and of the Assistant Attorney-General, that differ with my own, are herewith submitted.

Most respectfully,

JOHN W. NOBLE,
Secretary.

IOWA VILLAGE, *May 28, 1890.*

SIR: We have the honor now to make report to you in pursuance of the act of Congress authorizing the creation of what is commonly known as the Cherokee Commission. Under the instructions of the Hon. Secretary of the Interior the commission met at Guthrie, Oklahoma, on the 12th instant.

After securing transportation and making other necessary preparations for visiting the Indians at their home, we left Guthrie on the 16th and arrived at the Iowa Village on the 17th instant.

After conferring with Chief Tohee and other members of the tribe a meeting was arranged for that afternoon, which was held. Some three hours were spent in discussing the wants of the Government in a general way by the commissioners, and the Indians in a like general way presented their objections to any change in their condition or circumstances.

On Monday the 19th another conference was held and much talk was had, when the commission presented to them a definite proposition providing for allotments in severalty of 80 acres of land for each Iowa Indian residing upon the reservation and money payments as follows:

Twenty-four thousand dollars to be paid out under the direction of the Commissioner of Indian Affairs, as nearly per capita as may be, in the improvement of their allotments, buying breeding animals, agricultural implements and seeds; also \$3,600 per annum, payable semi-annually for the first five years after the contract shall take effect; \$3,000 per annum, payable semi-annually for the second five years after the contract shall take effect; \$2,400 per annum, payable semi-annually for the third five years after the contract shall take effect; \$1,800 per annum payable semi-annually for the fourth five years after the contract shall take effect; and \$1,200 per annum payable semi-annually for the fifth five years after the contract shall take effect.

On Tuesday, the 20th, another council was held, when three of the most advanced and intelligent members of the tribe accepted the offer and signed the contract.

On the night of our arrival the Iowas held a grotesque dance to the music of a bass drum accompanied by sleigh-bells.

This exercise was said to be for the purpose of invoking aid from on high to guide them in their negotiations with the commissioners. The dancing was continued Sunday and parts of other days during our stay, but negotiations were pushed quietly from day to day until a successful result was reached.

Before closing the contract, at the request of many Indians and at the dictation of humanity, an additional sum of \$350 was provided for Chief Tohee because of his total blindness and complete helplessness.

The Iowas are but little advanced in civilization and the older men are especially adverse to adopting or even approaching the ways of the white man. They seem unwilling to have their children educated, and seem afraid of contact with the whites, therefore in the contract we have adopted the plan embraced in the general allotment act of Congress, that the United States shall hold title in trust in their lands for a period of twenty-five years. These Indians are poor indeed.

The most intelligent among them inform us that many have no regular meals or meal time, but cook and eat whenever they have anything to cook and eat, whether it is twice in one day or once in two days. With a large reservation of much very good land a great majority of

them could not or would not live without annuities from the Government. They live in bark houses, admirably adapted to summer use while rains are not upon them. There seems to be now no incentive to energy; to exist is all that is required—a realization of the communist's dream—much property held in common, with greater poverty the common lot of all.

The Iowas have no government that we are made aware of.

They have a chief and he has some advisers of his own selection, but no one seems to have authority to control or direct. In conference with the commission any Indian seemed to have as much to say and with as much authority as the chief.

No person or set of persons assumed or claimed the right to make arrangements or contract with the Government by virtue of any position, official or otherwise, held by him or them; so that we were compelled to and did deal with the tribe. Of the chief and four advisers, we have secured the signatures of three to the contract, a majority of one. Of the twenty-three male members of the tribe over eighteen years of age residing and being on the reservation, we have secured the signatures of thirteen. Of less than fifty members of the tribe, male and female, over the age of eighteen years, we have secured the signatures of thirty-four. Of an entire population of about eighty-six men, women, and children, we have secured the signatures of those over eighteen years of age that represent sixty-two.

Those that did not sign the contract, a small minority in any way considered, all united in saying the contract was good and fair and liberal, but they would not sign it simply because they did not want to.

The Iowa Reservation contains 228,418 acres.

The Iowa tribe residing on said reservation is composed of eighty-six persons, as nearly as we can arrive at the number.

The allotments and church and school-house reservation contain (if eighty-six allotments shall prove correct) 6,890 acres.

The residue, 221,528 acres, becomes the land of the United States, with all Indian titles, claims, and interests extinguished.

The amount agreed to be paid for such relinquishment is in the aggregate \$84,350, or 38 cents per acre. But \$60,000 of the money to be paid is in annuities extending over the period of twenty-five years, the present worth of which, computing interest at 5 per cent. per annum, is in round numbers \$37,000, making the aggregate \$61,350, or less than 28 cents per acre.

The Commission is aware of the very limited extent of the Iowas' real title and interest in and to said tract of country, but their claim is absolute ownership, they believing, or assuming to believe, that an executive order signed by the great father, setting land apart for their permanent use and occupation, makes absolute title. The standard of intelligence among the Iowas makes it exceedingly difficult to make them understand that they have but a limited and qualified interest. Other negotiations in the Territory perfected and pending, and especially the Oklahoma purchase, have come to their knowledge, and their minds had become fixed upon allotments of 160 acres to each member of the tribe and \$1.25 an acre for the residue of the reservation; but the Commission, knowing their title to be limited and their tenure even insecure, procured the contract herein described.

The Commission appreciates the outfit for camping, transportation, and escort, commanded by an efficient officer in the person of Lieutenant Crawford.

Our thanks are also especially due to Capt. H. C. Cavanaugh, Thirteenth Infantry, U. S. Army, for his uniform courtesy and prompt action in executing the order of the War Department to furnish the above.

At the instance of the chief and other Indians the Commission made and signed two supplemental articles of small import to the contract.

At the instance of the chief, because of the necessities of the Iowas, the Commission agreed to recommend in its report (although foreign to the purpose for which the Commission was created) that their annuities provided for by existing laws shall be paid semi-annually instead of annually, as he represents is now the practice. In compliance with such agreement we make such recommendation.

The Commission is aware that the many conditions and times of payment provided for in the contract make it seem complicated, but in view of the condition of the Iowas they are all, in the judgment of the Commission, necessary for the best interest and comfort and prosperity of the Indian.

A list of the signers to the contract and of the persons represented by them is hereto appended.

We leave here to-day to visit and open negotiations with the Sac and Fox Indians.

We have the honor to be, very respectfully, your obedient servants,

DAVID H. JEROME,
A. M. WILSON,
WARREN G. SAYRE,
Commissioners.

The PRESIDENT,
Washington, D. C.

List of signers and persons represented by them.

William Tohee, chief.	Victor Dupee.	Julia Ely, wife.
Maggie Tohee, wife.	Mary Dupee, wife.	Unborn child.
Emma Tohee, niece.	Amma Dupee, daughter.	Naw-a-tomie, widow.
Charles Tohee, son.	Louise Dupee, daughter.	Robert Small, grandson.
Amelia Tohee, niece.	Sophia Dupee, daughter.	Moses.
Abrokinie.	Frederich Dupee, son.	Lucinda R. Moses, wife.
Mary White Cloud, wife.	Kirwin Murray.	Willie Dole.
Nellie Green, daughter.	Mary Murray, wife.	Josie Dole, wife.
Elwood Green, son.	Charles C. Murray, son.	Jacob Dole, son.
Jefferson White Cloud.	Eliza Keebolt.	Tom Dorian.
Ellen White Cloud, wife.	Eva White, daughter.	Catharine Dorian, wife.
Julia White Cloud, daughter.	David Tohee.	Big Ear.
Mary White Cloud, daughter.	Mary Tohee, wife.	Theresa Big Ear, wife.
Emma White Cloud, daughter.	Mary Neal Tohee, daughter.	Farrar Rubedeau, grandchild.
Phoebe White Cloud, daughter.	Edward Tohee, step-son.	David Tohee, jr., grandchild.
Eliza White Cloud, daughter.	Allie Tohee, step-daughter.	Julia Washington, widow.
Elizabeth White Cloud, daughter.	Garrie Squirrel.	Ida Washington, daughter.
Cora White Cloud, daughter.	Susan Squirrel, wife.	Anna Rubedeau, widow.
	Mary Fly Squirrel, daughter.	Maggie Rubedeau, daughter.
	Widow Tohee, A-paw-nu-mee.	Jennie Rubedeau, daughter.
	Mary Squirrel, sister.	Gratamontbu, grandchild.
	Albert Ely.	

Articles of agreement made and entered into on the 20th day of May, A. D. 1890, at the Iowa Village in what is known as the Iowa Reservation in the Indian Territory, by David H. Jerome, Alfred M. Wilson, and Warren G. Sayre, commissioners on the part of the United States appointed for the purpose, and the Iowa tribe of Indians residing on said reservation.

ARTICLE I. The said Iowa tribe of Indians, residing and having their homes thereon, upon the conditions hereinafter expressed do hereby surrender and relinquish to the United States all their right, title, claim, and interest in and to and over the following described tract of country in the Indian Territory, viz :

Beginning at the point where the Deep Fork of the Canadian River intersects the west boundary of the Sac and Fox Reservation ; thence north along said west boundary to the south bank of the Cimarron River ; thence up said Cimarron River to the Indian meridian ; thence along said Indian meridian to the Deep Fork of the Canadian River ; thence down said Deep Fork to the place of beginning,

set apart for the permanent use and occupation of the Iowa and such other Indians as the Secretary of the Interior may see fit to locate thereon, by executive order made and dated the 15th day of August, A. D. 1883.

ARTICLE II. Each and every member of said Iowa tribe of Indians shall be entitled to select and locate upon said reservation or tract of country eighty (80) acres of land which shall be allotted to such Indian in severalty. No other restriction as to locality shall be placed upon such selections than that they shall be so located as to conform to the Congressional survey or subdivision of said tract of country, and any Indian having improvements may have the preference over any other Indian in and to the tract of land containing such improvement, so far as they are within a legal subdivision not exceeding in area the quantity of land that he is entitled to select and locate.

Each member of said tribe of Indians over the age of eighteen years shall select his or her land, and the father, or if he be dead the mother, shall select the land herein provided for, for each of his or her children who may be under the age of eighteen years, and if both father and mother of the child under eighteen years of age shall be dead, then the nearest of kin over eighteen years of age and an Iowa Indian shall select and locate his or her land ; or, if such person shall be without kindred, as aforesaid, then the Commissioner of Indian Affairs or some one by him authorized, shall select and locate the land of such child.

ARTICLE III. That the allotments provided for in this act shall be made at the cost of the United States by special agents appointed by the President for such purpose, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and within sixty days after such special agent or agents shall appear upon said reservation and give notice to the acting and recognized chief of said Iowa tribe of Indians, that he is ready to make such allotments ; and if any one entitled to an allotment hereunder shall fail to make his or her selection within said period of sixty days, then such special agent shall proceed at once to make such selection for such person or persons, which shall have the same effect as if made by the person so entitled ; and when all of said allotments are made and approved then the residue of said reservation except as hereinafter stated, shall, as far as said Iowa Indians are concerned, become public land of the United States.

ARTICLE IV. Upon the approval of the allotments provided for herein by the Secretary of the Interior he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect

and declare that the United States does and will hold the land thus allotted for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotments shall have been made, or in case of his or her decease, of his or her heirs or devisees according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian or his heirs or devisees as aforesaid in fee, discharged of said trust and free of all incumbrance whatsoever.

And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void.

And during said period of twenty-five years said land, so allotted and the improvements thereon shall not be subject to taxation for any purpose by any State or Territory or any municipal subdivision thereof, nor subject to be seized upon any execution or other mesne or final process issued out of any court of any State or Territory, and shall never be subject to be seized or sold upon any execution or other mesne or final process issued out of any court of any State or Territory upon any judgment rendered upon any debt or liability incurred, the consideration of which, immediate or remote, passed prior to the expiration of said period of twenty-five years. And the law of descent and partition in force in the State or Territory where such lands are situated shall apply thereto.

ARTICLE V. There shall be excepted from the operation of this agreement, a tract of land not exceeding ten acres in a square form, including the church and school-house and grave-yard at or near the Iowa village, and that ten acres of land shall belong to said Iowa tribe of Indians in common so long as they shall use the same for religious, educational, and burial purposes for their said tribe—but whenever they shall cease to use the same for such purposes for their tribe, said tract of land shall belong to the United States.

ARTICLE VI. When all the allotments are made as aforesaid the United States, under the direction of the Commissioner of Indian Affairs, will expend for said Iowa tribe of Indians described herein as beneficiaries of this agreement for improving their said land, for building houses, providing for said Indians breeding animals, agricultural implements, and seeds, the sum of twenty-four thousand dollars, provided that said sum shall be paid out as nearly equally per capita as may be, the father, or, if he be dead, the mother to act for their children under the age of eighteen years, and the Commissioner of Indian Affairs in his own discretion to act for orphan children under the age of eighteen years.

ARTICLE VII. As a further and only additional consideration for such surrender and relinquishment of title, claim, right, and interest as aforesaid the United States will pay to said Iowa Indians, the beneficiaries of this agreement, per capita, three thousand and six hundred dollars per annum, payable semi-annually for the first five years after this agreement shall take effect; three thousand dollars per annum, payable semi-annually for the second five years after this agreement shall take effect; two thousand and four hundred dollars per annum, payable semi-annually for the third five years after this agreement shall take effect; one thousand eight hundred dollars per annum, payable semi-annually for the fourth five years after this agreement shall take effect, and one thousand two hundred dollars per annum, payable semi-annually for the fifth five years after the agreement shall take effect. In all such payments each person over the age of eighteen years

shall receive and receipt for his or her share, and the father, or if he be dead, the mother of any person entitled, who is under the age of eighteen years of age, shall receive and receipt for his or her share; and when both father and mother of such person be dead, the person, if an Iowa Indian, with whom such person makes his home, shall receive and receipt for such person's shares, otherwise it shall be paid to the Indian agent of the said Iowa Indians for the use of such orphan.

ARTICLE VIII. It is hereby expressly agreed and understood that nothing herein contained shall in any manner affect any other claim not mentioned herein that said Iowa tribe of Indians have against the United States; nor shall this agreement in any manner affect any interest that said tribe or its members may have in any reservation of land outside of the Indian Territory, nor shall this agreement in any manner affect any annuities or payments, principal or interest, due to said tribe or its members by existing laws or treaties with the United States.

ARTICLE IX. William Tohee, the chief of the Iowas, is incurably blind and helpless, and has a wife, Maggie Tohee, an Iowa woman, but by whom William has no child. William is not only helpless but requires and receives the constant care and attention of Maggie, so that neither can give attention to matters of business or labor or devote their time or energy to procuring a living; therefore it is mutually agreed, in addition to the provisions hereinbefore made for the Iowas, including said William and Maggie, that the United States will pay out to or for the use of said William, under the direction of the Commissioner of Indian Affairs, the sum of three hundred and fifty dollars. Because of the relation between the said William and Maggie and the care that he requires of her and that she bestows upon him, it is agreed that the patents to them creating the trust in the United States for them for the period of twenty-five years shall further recite and provide that in the event of death of either said William or Maggie during said period of twenty-five years then the possession and use of the lands allotted to both shall be in the survivor, and patents for the land allotted to both shall issue to the survivor, discharged of the said trust at the expiration of the said twenty-five years, provided said parties shall be living together as man and wife until the death of either.

ARTICLE X. This agreement shall be in force from and after its approval by the Congress of the United States.

In witness whereof we have hereunto set our hands and seals the day and year first above written.

David H. Jerome, A. M. Wilson, Warren G. Sayre, commissioners on the part of the United States.

Jefferson White Cloud (his x mark), Kirwan Murray, Victor Dupee, Eliza Keebolte, Eva White, William Tohee, chief, (his x mark), Maggie Tohee (her x mark), Charles Tohee, Emma Tohee, David Tohee, Garrie Squirrel, Susan Squirrel (her x mark), Abrockanie (John Green) (his x mark), Mary White Cloud (her x mark), Nellie Green (her x mark), Albert Ely (his x mark), Julia Ely (her x mark), Naw-a-tawmy (her x mark), Moses (his x mark), Lucinda R. Moses (her x mark), Willie Dole, Josie Dole (her x mark), Tom Dorian (his x mark), Catharine Dorian (her x mark), Mary Squirrel (her x mark), Widow Tohee (her x mark), Mary Tohee (her x mark), Ellen White Cloud (her x mark), Mary Murray (her x mark), Kis-tom-ie (her x mark), Big Ear (his x mark), Theresa Big Ear (her x mark), Julia Washington (her x mark), Anna Rubideau (her x mark).

SUPPLEMENTAL ARTICLES.

ARTICLE XI. It is now further agreed by the commission, on the part of the United States, at the special instance and request of Chief Tohee, that the Iowas at the expiration of said term of twenty-five years, during which the United States shall hold the allotments in trust for them, shall represent to the President that they desire said trust continued, then the President may, in his discretion, extend said period, during which said lands are so held in trust for any period not exceeding five years.

ARTICLE XII. It is further agreed that when said allotments are being made the chief of the Iowas may select an additional ten acres in a square form for the use of said tribe in said reservation, conforming in boundaries to the legal subdivisions of land therein, which shall be held by said tribe in common, but when abandoned by said tribe shall become the property of the United States.

DAVID H. JEROME,
A. M. WILSON,
WARREN G. SAYRE,
Commissioners.

I, Kirwan Murray, do hereby certify that I am the official interpreter chosen by the Iowa tribe of Indians; that I am a member of said tribe; that I interpreted to said Indians the nature and terms and words of the contract to which this is appended, made and entered into by and between David H. Jerome, Alfred M. Wilson, and Warren G. Sayre, commissioners on the part of the United States, and the Iowa Indians residing on their reservation in the Indian Territory, at the Iowa Village, on the 20th day of May, A. D. 1890; that said contract was by me fully explained to said Indians and they made to understand the same before it was signed by them; and I further certify that I was personally present when each and every person's name was signed thereto, and witnessed the same, and that those whose signatures appear to said contract appended the same thereto understandingly, and where signed by mark or otherwise I attest the same.

Given under my hand at the Iowa Village this May 28th, 1890.

KIRWAN MURRAY.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, June 5, 1890.

SIR: I have the honor to acknowledge the receipt of your communication dated June 4, 1890, in which you transmit certain articles of agreement made and entered into on the 20th day of May, 1890, at Iowa Village, Iowa Reservation, in Oklahoma Territory, by David H. Jerome, Alfred M. Wilson, and Warren G. Sayre, commissioners on the part of the United States, and the tribe of Indians residing on said reservation, and request that I will examine these documents without delay, with the view to determining whether they are in due form and in compliance with the instructions to the commissioners and in my judgment valid for the purposes indicated.

You direct the preparation of the necessary papers for the submission of the agreement to the President for his action and for his transmis-

sion of the same to Congress if in the opinion of this office they are in due form and sufficient. If not, that I will state any objections to the same at length that they may receive due consideration at your hands.

From the report of the commission which accompanies the agreement it appears that they obtained the signatures of thirteen of the twenty-three male members of the tribe over eighteen years of age, residing on the reservation, and the signatures of thirty-four of the fifty members of the tribe, male and female, over the age of eighteen years.

By the first article of the agreement the Iowa tribe of Indians residing and having their homes upon the tract of country in the Indian Territory as described in the Executive order of August 15, 1883, surrender and relinquish to the United States all their right, title, claim, and interest in and to the said described tract upon the terms and conditions specified in the agreement.

By the second article of the agreement each and every member of said Iowa tribe of Indians (now residing on said described reservation) is entitled to select and locate on said reservation 80 acres of land, which shall be allotted to said Indians in severalty.

The agreement provides the manner in which these allotments shall be made and for the issuance of patents therefor substantially upon the terms and conditions prescribed in the general allotment act (24 Stats., 388).

The price stipulated to be paid for the lands relinquished, as stated by the commission, is, in the aggregate, \$84,350, or 38 cents per acre, payable in semi-annual payments extending over a period of twenty-five years.

I see no objection to the form of the agreement.

This reservation was established by Executive order of August 15, 1883. In office report of July 30, 1883, submitting a draught of the order, the following statement was made:

It is probable that the Iowa Reservation in Kansas and Nebraska will before many years be sold, when that portion of the tribe in the Indian Territory will be joined by their brethren from those States, making the number of Iowas some two hundred and twenty.

March 3, 1885, an act was passed which provided for the sale of the Sac and Fox and Iowa Indian Reservations in the States of Kansas and Nebraska, and for other purposes (23 Stats., 351).

The first and second sections of said act provided for the appraisal and sale of the remainder of the reservation of the Iowa Indians lying in the States of Nebraska and Kansas, with the consent of a majority of the chiefs, headmen, and male adults of the tribe expressed in open council.

The third section provided that if any member of the tribe, residing at the date of the passage of the act upon any lands authorized to be sold, being the head of a family or a single man, and having improvements thereon, should elect to remain on the lands occupied by him, he should have an allotment of the land with title thereto.

The fifth section of the act provided that the Secretary of the Interior might, with the consent of the Indians expressed in open council as aforesaid, secure other reservation lands upon which to locate said Indians, cause their removal thereto, and expend such sums as might be necessary for their comfort and advancement in civilization.

The sixth section provided for the issuance of a patent for the reservation that might be selected under the provisions of the preceding section.

April 4, 1885, the Secretary of the Interior decided that the Iowa In-

dians could, under the above act if they so desired, be located on the Iowa Reservation in the Indian Territory created by the Executive order of August 15, 1883, in which event a patent would be issued to the Iowa tribe of Indians for such reservation, as provided in the sixth section of the act.

Under instructions from this office separate councils were held with the Iowa Indians in Kansas and Nebraska, and on the reservation in the Indian Territory. The result of these councils, as stated by Special Agent Parsons, in his report of August 7, 1885, is as follows :

All the Iowas of the Indian Territory, twenty-six in number, have voted to sell the reservation in Kansas and Nebraska. * * *

Eleven out of the twenty-three Iowas in Kansas and Nebraska voted to sell the reservation in Kansas and Nebraska. * * *

In all, thirty-seven out of the forty-nine Iowas voting in favor of sale and to locate Kansas and Nebraska Iowas on Iowa reservation in Indian Territory.

These numbers refer to chiefs, headmen, and male adults.

Objections having been made by the Iowas of Kansas and Nebraska, that under the third section of the act of March 3, 1885, no provision was made for allotments to the minor children of those members who elected to remain on the reservation in those States, or to orphans, Congress was asked to amend the act in this respect, and on the 26th of January, 1887, an act was passed amending the third section of said first-mentioned act, so as to provide for the allotment of lands to those persons desiring to remain, as follows :

To the head of a family, 160 acres ; to a single person over eighteen years of age, or an orphan child under eighteen years of age, 80 acres ; and to each minor child under eighteen years of age, 40 acres (24 Stats., 367). The act was unchanged in other respects.

Under the provisions of this act councils were again held with each portion of the tribe, during the months of July and August, 1887, by Inspector R. S. Gardner, under instructions from this office dated June 18, 1887, and approved by the Secretary of the Interior.

In his instructions Inspector Gardner was instructed to carefully explain to the Iowas, both in Kansas and Nebraska and in the Indian Territory, all the provisions of the act of March 3, 1885, and the act amendatory thereof, and "to inform all the Iowas that they can remove to the reservation in the Indian Territory already occupied by a portion of the tribe, where there is an abundant quantity of land for all their wants."

He reported August 2, 1887, that the Iowa tribe were almost a unit in favor of the sale of their lands in Kansas and Nebraska as contemplated by the two acts of Congress, approved March 3, 1885, and January 26, 1887. The result of these two councils was as follows :

At the council held with the Iowas in Kansas, July 20, 1887, twenty-four voted to sell lands of the reservation in Kansas and Nebraska. Six voted not to ; six being absent.

At the council held with the Iowas, August 3, 1887, at the Sac and Fox Agency, Indian Territory, twenty-five voted to sell the lands of the reservation in Nebraska and Kansas, none voting in the negative.

This action was held to be a valid acceptance of the provisions of the act of March 3, 1885, as amended by the act of January 26, 1887.

On the 20th of August, 1887, the Secretary instructed the Commissioner of the General Land Office to enter into contract for the survey of the reservation in Kansas and Nebraska, which was necessary before lands could be allotted or appraised.

In the original of the instructions for the guidance of the special

agent in the council of the Iowa Indians, he was instructed to inform them that the decision to locate them in the Indian Territory was based upon the fact that it was thought that such location would meet with their wishes, but if they desired another location the matter would be further considered.

From the report of Special Agent Parsons, however, it appeared that the proposed location with their brethren in the Indian Territory was entirely satisfactory to the members in Kansas and Nebraska and the negotiations were apparently conducted with the understanding that those of the tribe who wished to remove to the Indian Territory could do so, and no other location was suggested or thought of. The same is true of the negotiations conducted by Inspector Gardner.

The surveys not having been completed the allotments in Kansas and Nebraska have not been made, and it is not known what proportion of the tribe will elect to remain and what to remove to the Territory.

It has been reported to this office on several occasions that some of these Indians were anxious to remove, and desired assistance in doing so; but the agent was informed that it was not considered expedient to remove any of them until allotments had been made and it was definitely known how many and who desired to remove.

Under the provisions of the acts hereinbefore cited, and the councils held with the Indians, it seems to me evident that any of the Iowa Indians in Kansas and Nebraska who desire to do so have the right to remove to and settle with the Iowas in the Indian Territory, and that when such removal is effected, the united tribe will be entitled to a patent from the United States for the lands in such Indian Reservation, under the provisions of the sixth section of the act of March 3, 1885.

It seems to follow that those of the Indians in Kansas and Nebraska who may elect to remove have an inchoate right in the reservation in the Indian Territory, of which right they can only be deprived with their own consent or by the action of a clear majority of the whole tribe.

Provision ought, therefore, to be made in the agreement whereby sufficient land shall be reserved to make allotments to those members of the tribe not residing on the reservation but who may elect to remove thereto.

Under the provisions of the act of March 3, 1885, section 8, any Indian who may be properly residing on the reservation selected under the act, is entitled to an allotment as follows:

Each head of a family, 160 acres; each single person over twenty-one years of age, 80 acres; each minor, 40 acres.

As the allotment provided for in the agreement is 80 acres to each person it would seem to be necessary to secure the consent of each person intending to remove to the proposed change in quantity. This, however, is hardly practicable in view of the present unsettled condition of the matter, and the proper manner by which the rights of all parties are to be protected is, undoubtedly, to secure the signatures of a majority of the whole tribe to the agreement. I do not anticipate that any difficulty will be experienced in securing the consent of the Kansas and Nebraska Indians to the agreement, modified so as to protect the rights of all the members of the tribe.

The fact that the interest of the Indians in the Indian Territory in the tribal reservation in Kansas and Nebraska is fully protected in the

agreement, strengthens my belief that the rights of those in Kansas and Nebraska in the reservation in the Indian Territory should also be protected.

The instructions prepared in this office for the guidance of the Cherokee Commission contain no reference to the Kansas and Nebraska Iowas. When the instructions were prepared this office was probably under the impression that the provisions of the acts of 1885 and 1887 would be executed and all the Indians intending to remove would be located on the new reservation before the commission began their negotiations with the Iowas, and therefore made no mention of the matter. If a full history had been given it would have prevented the commission from concluding the agreement without considering the Iowas in Kansas and Nebraska as they appear to have done.

It may be remarked that the delay in the execution of the provisions of the acts of 1885 and 1887 was occasioned by the imperfect manner in which the survey was executed, which survey has recently been rejected by the General Land Office.

I observe that two supplemental articles to the agreement submitted by the commission are not signed by the Indians. These articles, however, are mainly for the benefit of the Indians, and their failure to sign is not considered a material defect. It is suggested, however, that if the agreement should be reformed in accordance with the views herein indicated, so as to render a new agreement necessary, all the articles should be incorporated in it, so as to show that they have been consented to by both the commission and the Indians.

I will await your instructions upon the points involved in the information here presented before proceeding as directed by you to the preparation of the documents required for transmitting the agreement to the President.

Very respectfully, your obedient servant,

R. V. BELT,
Acting Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, June 12, 1890.

SIR: I have the honor to acknowledge the receipt of your communication, dated June 10, 1890, in which, referring to office report of June 5, 1890, relating to the Iowas in Kansas and Nebraska, and the question whether they should join in the agreement recently made with the Iowa Indians in the Indian Territory, you ask what was done with the land in Iowa (Kansas believed to be meant) and Nebraska not used for allotments, and which was to be sold in 40-acre tracts; whether the money was put to the credit of the whole tribe, or if it has yet been disposed of; and what consideration, if any, was paid directly or indirectly for the reservation in the Indian Territory, and who paid it, whether the tribe as a whole or otherwise.

In reply I have the honor to state that the acts of March 3, 1885 (23 Stats., 351), and January 26, 1887 (24 Stats., 367), providing for the allotment of lands in severalty to such of the Iowa Indians in Kansas and Nebraska as desire to remain, the removal of the remainder, and

the appraisal and sale of the surplus land, have not as yet been executed for the reason indicated in office report of the 5th instant, viz, the imperfect execution of the necessary surveys, which surveys have only recently been finally acted upon by the General Land Office and rejected. Therefore the allotments have not been made, and consequently no lands have been sold and no money has been put to the credit of the tribe, otherwise disposed of.

The fourth section of the act of March 3, 1885 (which act also relates to the adjoining reservation of the Sac and Fox of the Missouri, in Kansas and Nebraska), provides that the net proceeds of the sale of the lands "shall be placed to the credit of the said Sac and Fox and Iowa Indians, according to the interest of said tribes in said reservations, in the Treasury of the United States."

The Iowa Reservation in Kansas and Nebraska was established by the treaty of September 17, 1836 (7 Stats., 511), embracing 200 sections of land. By the treaty of May 17, 1854 (10 Stats., 1069), the Iowas ceded to the United States all of the reservation except a certain described portion. By the treaty of March 6, 1861 (12 Stats., 1171), they ceded to the United States, for the use of the Sac and Fox of the Missouri Indians, a portion of the reservation as reduced by the treaty of 1854.

A portion of the Iowa tribe, becoming dissatisfied from some cause, wandered into the Indian Territory in 1878 or 1879 and located near the Sac and Fox of the Mississippi Reservation.

In 1881 their number was reported as forty-seven.

In 1883 their number was reported as eighty-eight. It being anticipated that all or nearly all of the tribe would eventually remove to the Territory, a reservation was set apart for them by the Executive order of August 15, 1883, as stated in my report of the 5th instant. For this reservation no consideration was paid, either directly or indirectly, either by the Iowa tribe or any members thereof.

The Iowas in the Indian Territory have always shared pro rata with their brethren in Kansas and Nebraska in the annuities due the tribe under treaty stipulations, payment being made to those in the Territory, for the past seven or eight years at least, at the Sac and Fox Agency, Indian Territory.

As stated in office report of the 5th instant, it is believed that the rights of the Iowas in the Territory in the tribal lands in Kansas and Nebraska are fully protected in the act of March 3, 1885. It is also believed they will share in the proceeds that may be derived from the sale of such lands, if they shall be sold.

Very respectfully, your obedient servant,

R. V. BELT,
Acting Commissioner.

THE SECRETARY OF THE INTERIOR.

Referred to the Assistant Attorney-General.

Do not the facts here stated affect the right of any other Iowas than those on the Indian Territory reservation to any participation? Have any of them any other right that the Government chooses to concede?

J. W. NOBLE,
Secretary.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, June 23, 1890.

SIR: I have the honor to acknowledge the receipt, by your reference of a further communication from the honorable Acting Commissioner of Indian Affairs, dated June 12, 1890, in response to your inquiry as to the disposition of the reservation in Kansas and Nebraska for the Iowa tribe of Indians; also as to the consideration paid for the Iowa Reservation in Oklahoma Territory, established by Executive order. The Acting Commissioner reports that no disposition has been made of said Kansas and Nebraska reservation under the provisions of the acts of Congress approved March 3, 1885 (23 Stats., 351), and January 26, 1887 (24 Stats., 367), for the reason that no sufficient surveys have been made of said land, and hence it has been impossible to make allotments and ascertain who of said Indians would remain and who would remove to said reservation in the Oklahoma Territory.

He also reports that said reservation in Kansas and Nebraska was established by the treaty of September 17, 1836 (7 Stats., 511), covering two hundred sections of land; that by treaty of May 17, 1854 (10 Stats., 1069), the Iowas ceded to the United States all of said reservation except a certain part designated therein; that by the treaty of March 6, 1861 (12 Stats., 1171), they ceded to the United States for the use of the Sacs and Foxes of Missouri a certain portion of their reservation as diminished by said treaty of 1854; that in 1878 or 1879 a part of said Iowa tribe of Indians went into the Indian Territory and located near the Sacs and Foxes of the Mississippi Reservation; that the number of said Iowas, estimated at forty-seven in 1881, increased to eighty-eight in 1883, and upon the expectation that nearly all of the tribe would ultimately remove to said Territory, a reservation was set apart for them by Executive order dated August 15, 1883; that the Iowas in Kansas and Nebraska and upon said reservation established by said Executive order have always shared equally in the annuities due the tribe under treaty stipulations; that "the rights of the Iowas in the tribal lands in Kansas and Nebraska are fully protected in the act of March 3, 1885," and "that they will share in the proceeds that may be derived from the sale of such lands."

By said reference the following question is asked:

Do not the facts here stated affect the right of any other Iowas than those in the Indian Territory reservation to any participation? Have any of them any other right than the Government chooses to concede?

Your inquiry involves the question (1) whether any of the Iowa Indians have a *right* to lands in said reservation in the Indian Territory, or in the proceeds from the sale thereof, except as a gratuity from the Government, and (2) whether the Iowa Indians in Kansas and Nebraska, not on said reservation, are entitled to share in the funds arising from the sale thereof. These questions were partly considered in my opinion of June 9, 1890. To answer said questions satisfactorily, necessitates a careful examination and consideration of the several treaties made with said tribe of Indians, the acts of Congress, and the departmental action relative thereto.

By Article II of the treaty of September 17, 1836 (7 Stats., 511), the United States, "for a permanent home on which they could settle," assigned "to the Iowa tribe and Missouri band of Sacs and Foxes the small strip of land on the south side of the Missouri River lying between the Kickapoo northern boundary-line and the Grand Nemaha

River, and extending from the Missouri back and westwardly with the said Kickapoo line and the Grand Nemaha, making four hundred sections, to be divided between the said Iowas and Missouri band of Sacs and Foxes, the lower half to the Sacs and Foxes, the upper half to the Iowas."

On May 17, 1854, articles of agreement were executed by said tribe of Iowa Indians and a duly authorized commissioner of the United States, and by the first article thereof the Iowas ceded to the United States "all their right, title, and interest in and to the country, with the exception hereinafter named, which was assigned to them by the treaty" of September 17, 1836. The exception above mentioned embraces a certain tract designated by metes and bounds, which the treaty provides "shall be the future and permanent home of the Iowas." Articles II and III of said treaty provide for the sale of the ceded land and the payment of the proceeds thereof to the Iowa Indians." Provision is made by Article VI for the division of the reserved lands and assignment thereof to "each person or family" under the direction of the President. By Article XIII it is provided that—

The President may, by and with the advice and consent of the Senate, adopt such policy in the management of their affairs as in his judgment may be most beneficial to them, or Congress may hereafter make such provision by law as experience shall prove to be necessary." (10 Stats., 1069.)

By the treaty of March 6, 1861 (12 Stats., 1171), the Sacs and Foxes of Missouri ceded to the United States "all their right, title, and interest in and to the lands within their present reservation." The second article provided for the survey and sale of said lands under the direction of the Secretary of the Interior, and also the disposition of the proceeds thereof. By Article III of said treaty—

The Iowa tribe of Indians, parties to this agreement, hereby cede, relinquish, and convey to the United States for the use and benefit of the Sacs and Foxes of Missouri for their permanent home, all that part of their reservation lying and being west of Noheart's Creek and bounded as follows:

* * * * *

And it is hereby understood and agreed that in full consideration for said cession the United States shall hold in trust for the use and benefit of the Iowas the one-half net proceeds of the sales of the lands described in the second article of this agreement, and interest thereon at the rate of 5 per centum per annum shall be paid to the Iowa tribe in the same manner as their annuities are paid under the treaty of May 17, 1854. (10 Stats., 1069). The reservation herein described shall be surveyed and set apart for the exclusive use and benefit of the Sacs and Foxes of Missouri, and the remainder of the Iowa lands shall be the tribal reserve of said Iowa Indians, for their exclusive use and benefit.

It appears from the report of the Indian agent in charge, dated August 16, 1883, that the "Iowas and Sac and Fox of Missouri" had been agitating the question of moving to the Indian Territory for some time, and at their request permission was granted by the Department by letter dated March 9, 1883, to send delegates to select homes in the Indian Territory upon the condition "that all the Indians at the Great Nemaha agency belonging to the said tribes should remove to the Indian Territory;" that, with the exception of a few, the Indians concluded to remain upon their present reservations, until about the date of said report, when having been visited by two delegates from the Indian Territory, the Indians were again agitating the question of removal and "a large majority are expressing desires to join their tribes in the Indian Territory." (Rep. Com. Ind. Aff. 1883, p. 93.)

On August 15, 1883, the President, by executive order set apart a reservation in the Indian Territory "for the permanent use and occu-

pation of the Iowa and such other Indians as the Secretary of the Interior may see fit to locate thereon." (Rep. Com. Ind. Aff. 1883, p. 223.)

It was the expectation of the Indian Office that when said reservation was established all of the Iowas would remove thereon. (Letter Commissioner of Indian Affairs to the Secretary of the Interior, April 3, 1885.) This was the express stipulation in said departmental order allowing the use of tribal funds to pay the expenses of the delegates sent by the tribe to the Indian Territory to select homes for the Indians. It was also anticipated that the reservation in Kansas and Nebraska would ultimately be sold "when that portion of the tribe in the Indian Territory will be joined by their brethren from those States, making the number of Iowas some 220." This was stated in the report of the Commissioner of Indian Affairs dated July 30, 1883, submitting to the Department the draft of the executive order establishing said reservation. (Letter Commissioner of Indian Affairs, July 30, 1883.) Provision was made for the sale of the Sac and Fox Iowa Indian reservations in Nebraska and Kansas by the act of March 3, 1885 (23 Stats., 351). The first section authorized the Secretary of the Interior "with the consent of a majority of the chiefs, headmen and male adults of the Sac and Fox (of the Missouri) tribe of Indians and the Iowa tribe of Indians expressed in open council by each tribe," "to cause to be surveyed if necessary and sold the remainder of the reservations of the Sac and Fox and Iowa Indians lying in the States of Nebraska and Kansas." The lands were to be appraised in tracts of forty acres each. By section 2 it was provided "that after the survey and appraisal of said lands the Secretary of the Interior shall be, and hereby is, authorized to offer the same * * * at public sale, to the highest bidder."

Provision is also made for the appraisal separately of the improvements made upon such lands by any Indian or for the United States, and also fixing the minimum price at eight dollars per acre, and limiting the sales to actual settlers, or such as intend to become such, in quantity not exceeding 160 acres, and also providing for payments in installments and the issuance of patents upon receipt of all the payments by the purchaser. Section 3 provides that—

If any member of said Sac and Fox or Iowa tribe of Indians residing at the date of the passage of this act upon any of the lands authorized to be sold by the second section of this act, and who has improvements thereon, shall elect to remain on the lands occupied by him, such lands shall be withheld from sale as provided for herein, and the Secretary of the Interior shall cause a certificate to issue to the person so electing as follows: If he be the head of a family, to 160 acres of land, and if a single man, to 80 acres of land, the lands so selected to include his improvements, and to be accepted in full satisfaction of his interest in and to the said reservation and of the moneys or fund realized from the sale thereof.

It was further provided that said certificates were to hold the title in trust for twenty-five years, when patents were to be issued to the Indians conveying the fee in discharge of the trust, and of all incumbrance whatever. Section 4 provided that each Indian shall be paid for his improvements, and that the proceeds of the sales of the improvements of the United States and the proceeds of the sale of said lands shall be deposited in the Treasury of the United States, and the income thereof "shall be annually expended for the benefit of said Indians, under the direction of the Secretary of the Interior." Section 5 provides that—

The Secretary of the Interior may, with the consent of the Indians expressed in open council, as aforesaid, secure other reservation lands upon which to locate said Indians cause their removal thereto, and expend such sums as may be necessary for their comfort and advancement in civilization.

By section 6 it is provided that—

The President of the United States be, and he is hereby authorized to cause patents to be issued to the Sac and Fox (of the Missouri) tribe of Indians and the said Iowa tribe for the reservations that may be selected for them under the provisions of the preceding section.

Section 7 provides for the issuance of trust patents to said tribes for the reservations selected for them under the provisions of said section 6.

Section 8 provides that—

Whenever the Indians who may be properly residing upon the reservations referred to in the last preceding section shall desire allotments of lands in severalty the Secretary of the Interior shall cause allotments to be made to such Indians in quantity as follows:

To each head of a family, 160 acres; to each single person over the age of twenty-one years, 80 acres; to each minor, 40 acres.

Section 10 provides that—

The Secretary of the Interior may, with the consent of the Indians expressed in open council, as provided in section 1, cause the removal of that portion of the Sac and Fox and Iowa tribes residing upon said Sac and Fox and Iowa reservations in Nebraska and Kansas to the reservations that may be secured for them,

and an appropriation of \$10,000 was made for the payment of the expenses of removal of said Indians, appraisement, and sale of the lands, which was to be re-imbursed to the United States out of the first proceeds of the sale of said lands. The third section of said act of 1885 was amended by the act of January 26, 1887 (24 Stats., 367), changing the amount of allotment, so as to give to each Indian of said tribes—

If he be the head of a family, 160 acres; if a single person over eighteen years of age, or orphan child under eighteen years of age, 80 acres; and if a minor child under eighteen years of age, 40 acres. The land so selected shall be held from sale as provided herein, and shall be accepted at their fair valuation, to be ascertained by the Secretary of the Interior, in part satisfaction of his interest in and to said reservation, and of the moneys or fund realized from the sale thereof. *Provided*, That his right to share in the other funds and credits of the tribe shall not be impaired thereby.

On April 4, 1885, Acting Secretary Muldrow advised the Commissioner of Indian Affairs that he approved his suggestion relative to holding a council with the Sacs and Foxes of Missouri to learn if they will accept the provisions of the act of March 3, 1885, and "that the Iowa Indians be informed that if they so desire they can be located on the present Iowa reservation in the Indian Territory, and that a patent therefor will be made to the Iowa tribe of Indians, less a sufficient quantity of land for the Tonkawas now located there." (Vide Letters on Ind. Aff., March 11 to June 12, 1885, p. 270.)

This was communicated to the Iowa Indians July 31, 1885 (Ex. Doc. 70, 49th Cong., 1st sess., p. 8).

It appears from letter to you from the Commissioner of Indian Affairs of June 5, 1890, that councils of said Indians were held both in Nebraska and Kansas and in the Indian Territory in July and August, 1887, by Inspector Gardner, of the Indian Office, and the ratification of said acts was secured as required by the terms thereof. The reservation in Nebraska and Kansas has not been allotted or sold, as provided in said acts, for the reason that no sufficient surveys thereof have yet been made.

On August 15, 1889, Acting Secretary Chandler advised the Commissioner of Indian Affairs that he concurred in the opinion expressed in his "letter of the 10th inst." that—

It is not necessary for those of the Iowa tribe of Indians who desire to remove to the Indian Territory to remain on their reservation in Kansas until the lands are allotted to those who take lands thereon under the act of January 26, 1887, (24 Stats.,

367). As these Indians have consented to the sale of their reservation in Kansas in accordance with the terms of the act of March 3, 1885 (23 Stats., 261), some arrangement should be made by your office for the removal to the Indian Territory of those who elect to remove, and they should be removed in a body and settled in their homes, provision for which is made by the 10th section of said act of March 3, 1885. (Vide letters on Indian Affairs from July 24, 1889, to October 7, 1889, p. 318.)

Upon verbal inquiry it is ascertained that on November 15, 1889, the Commissioner of Indian Affairs advised the Indian agent relative to the removal of the Iowas, and "that no further action should be taken in the matter until allotments have been made or until further instructions shall have been received."

In my judgment, every Iowa Indian upon the Nebraska and Kansas reservation has the right secured to him by the express provision of said acts of 1885 and 1887 to go to a reservation to be secured for him. Provision was made in said acts for other reservations upon which to locate said Indians, and that provision is just as binding upon the Government in equity as though it had been made by treaty. The Cherokee Tobacco (11 Wall., 621). With the understanding that they should have another reservation, they consented to the terms of the acts of 1885 and 1887, and this is a sufficient consideration to entitle them to a property right in the Indian Territory reservation, or to some other reservation to be provided in accordance with these acts of Congress. They were not required to pay anything for it, but they were guaranteed the right to elect either to take allotments in Kansas and Nebraska or go to a reservation to be secured for them. An appropriation was made by said act of 1885 for their removal "to the reservation or reservations that may be secured for them," and the care and duty of such removal, even in the absence of legislation as to the manner, has always devolved upon the General Government (*Fellows vs. Blacksmith*, 19 How., 370). It is no fault of the Indians that they have not exercised the choice indicated in said act.

The previous action of the Department in dealing with Iowa Indians on both reservations as members of one tribe, the express provision in section 3 as amended "that his right to share in the other funds and credits of the tribe shall not be impaired thereby," in addition to the fact that each Indian on the Nebraska and Kansas reservation was given the right under said acts and the ruling of the Department to go upon said reservation in the Indian Territory and have an allotment as therein provided, forces my mind to the conclusion that all of said Iowa Indians have equitable rights in the reservation in the Indian Territory which should be considered. If they are denied any right in the present reservation by Congress they should be protected in some other way. The construction of said acts must be liberal. As was said by Chief-Justice Marshall in the case of *Worcester vs. The State of Georgia* (6 Peters, 582):

The language used in treaties with the Indians shall never be construed to their prejudice, if words be made use of which are susceptible of a more extended meaning than their plain import as connected with the tenor of their treaty.

It may also be observed that the act of March 2, 1889 (25 Stats., 1005), providing for the appointment of the Cherokee Commission, makes provision for a negotiation "with the Cherokee Indians, and all other Indians owning or claiming lands lying west of the ninety-sixth degree of longitude in the Indian Territory, for the cession to the United States of all their title, claim, or interest of every kind and character in and to said lands." Words more apt could not have been chosen to express the intention of the legislative will, that said commission should negotiate

for every kind of claim, legal or equitable, of any Indians to the lands lying within the limits designated by the act. Congress evidently intended that there should be no claim omitted in the negotiation by the commission, and to my mind it would be inequitable to place the Indians of Nebraska and Kansas upon any different status than they would have occupied if the provisions of said acts of 1885 and 1887 had been fully executed by the Government.

The policy of Congress is plainly indicated in the general allotment act of February 8, 1887 (24 Stats., 388), wherein no distinction is made between reservations created by treaties or acts of Congress and those made by executive order; but it is expressly provided that "the purchase money shall be held in the Treasury of the United States for the sole use and benefit of the tribe or tribes of Indians to whom such reservations belonged."

In my opinion each member of the tribe has an interest in the funds of the tribe, and as the Iowa Indians on the reservation in the Indian Territory have an interest in the fund derived from the sale of the reservation in Nebraska and Kansas, it would seem but simple justice that those in Nebraska and Kansas should be permitted to go upon said reservation and share in the proceeds of the sale of the reservation in the Indian Territory. If, however, it should be deemed impracticable, in view of the fact that they have never lived on the Indian Territory reservation, and that it was set aside by Executive order before the passage of said act of 1855 providing for "other reservation lands," or for any other reason, to recognize their rights in this specific tract of land, Congress, to which this agreement must be referred for ratification, having jurisdiction of the whole subject, will no doubt protect their rights. Under the treaty of 1866 with the Cherokees Congress can settle friendly Indians on the Cherokee Reservation either east or west of the ninety-sixth parallel (Articles XV and XVI, 14 Stats., 803). So that Congress may yet provide a reservation in the Indian Territory for those Iowa Indians who do not wish to take allotments under the act of 1885 in Kansas and Nebraska, or it may recognize their rights in the present Iowa Reservation set apart by Executive order in 1883. The Supreme Court, in the case of the Choctaw Nation *vs.* United States, speaking of the Indians, says:

From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises a duty of protection, and with it the power. This has always been recognized by the Executive and by Congress and by this court whenever the question has arisen (119 U. S., 27).

The papers submitted are herewith returned.

Very respectfully,

GEO. H. SHIELDS,
Assistant Attorney-General.

The SECRETARY OF THE INTERIOR.

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